Majlis Perbandaran Subang Jaya v Visamaya Sdn Bhd & Anor

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01–127–04 OF 2014

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ABDUL WAHAB PATAIL, HAMID SULTAN AND UMI KALTHUM JJCA

11 MAY 2015

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Land Law — Planning permission — Refusal of — Owner of land applied to local authority for planning permission to erect service apartments after converting express condition of land use to 'commercial building' — Local authority rejected application on ground service apartments inconsistent with surrounding industrial land usage — Whether land use allowed in title under National Land Code ('NLC') had to be read consonant with zoned use of area in which land was located as planned by local authority — Whether NLC had to be read harmoniously with Town and Country Planning Act 1976 ('TCPA') which, being later legislation, prevailed in event of inconsistency — Whether s 108 of the NLC could not override TCPA

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The appellant was the local planning authority in respect of a plot of land ('Lot 847') located within its jurisdiction which had a freehold title stating the category of the land's use as 'Perusahaan/Industri' with the express condition it should be used for 'Industri Sederhana' . Under the Local Plan Majlis Perbandaran Subang Jaya 2020 ('the MPSJ local plan'), Lot 847 was zoned for 'Industry' and could be used for 'commercial purposes'. The registered owner of Lot 847 applied to the authorities to convert the category of the land's use to 'Building' and the express condition of the land's use to 'Perniagaan'. In response, the appellant notified that it had no objections to the change of use to 'Komersial while the State Authority approved the conversion of category of land use to 'Building' with the express condition the land was to be used for 'Commercial Building'. Under a power of attorney from the registered owner of Lot 847, the first respondent ('Visamaya') applied to the appellant for planning permission to build two blocks of commercial service apartments on the land. The appellant rejected the application on the ground the proposed project was inconsistent with the surrounding land usage; that only commercial activity that supported the existing industrial area could be permitted. Visamaya's appeal to the second respondent ('appeal board') against the appellant's decision was dismissed. Visamaya then sought for and obtained from the High Court an order of certiorari quashing the appeal board's decision and an order of mandamus directing the appeal board to reconsider Visamaya's appeal. The High Court, inter alia, applied s 108 of the National Land Code ('the NLC') to hold that the MPSJ local plan which dictated how Lot 847 should be used amounted, under s 108, to a 'restriction' that was inconsistent

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with the express condition in the register document of title to the land and, to the extent of that inconsistency, the 'restriction' had no effect; that, accordingly, the appeal board's decision was illegal and null and void. The instant appeal was against the High Court's decision.

Held, allowing the appeal and setting aside the High Court's decision, with costs RM20,000:

(1) The submission that s 108 of the NLC rendered the Town and Country Planning Act 1976 ('TCPA') and zoning thereunder to be inconsistent with land use under the NLC title was null and void and held no merit. The High Court failed to consider that the NLC was enacted in 1965 while the TCPA was enacted in 1976. Parliament could not have been ignorant of the NLC enacted earlier. The approach to interpretation, therefore, had to be that Parliament intended the TCPA to be read consistent with the NLC; and, if that was not possible, the TCPA, as the later legislation, prevailed. Section 108 of the NLC could not apply to laws passed subsequently by Parliament and regulations authorised thereunder. The NLC provided in general terms for land use for agriculture, building and industry. Conditions in individual titles were too cumbersome a means for the purpose of planning development. Before the NLC, a large number of land titles had been issued and there were other laws and by-laws. It was to those that s 108 was directed (see paras 17–19).

(2) The use allowed in the title under the NLC had to be read so as to be consistent with the zoned use of the area in which the land was located. A commercial building in a local area planned or zoned for industry necessarily had to be one that was consistent with serving industry. To accept otherwise was to flout the TCPA and the MPSJ local plan. While the proposed service apartment in the instant case was a commercial building, the category of land use in the title was quite another matter from planning or zoning for industry. Applying the term 'commercial building' in the title to allow commercial building that accorded with the existing industrial zoning was a reasonable rationalisation the local planning authority was entitled to make to ensure adherence to the planning objectives as approved. The appeal board, therefore, did not act unreasonably in rejecting the first respondent's appeal (see paras 23–24).

(3) The TCPA provided specifically for the proper control and regulation of town and country planning in Peninsular Malaysia and for purposes connected therewith or ancillary thereto. While the NLC addressed land use in individual titles, the TCPA addressed planning by land-use zones. By the time the TCPA was promulgated, large numbers of land titles had been issued with conditions of use, as often as not, differing from the zoning. For planned development to succeed, if the condition of use in

the title conflicted with the zoning, the condition was almost routinely amended to the use authorised by the zoning (see para 20).

(4) The terms contained in the Petaling District and Land Office's reply letter to the first respondent made it clear that while a change of land use was allowed, the first respondent was expected to comply with the MPSJ local plan and the requirements of the planning authority (see paras 21–22).

(5) There was no illegality as against s 108 of the NLC in the present case. Neither was there irrationality, lack of proportionality nor procedural impropriety in the decision of the appellant and the appeal board (see para 26).

[Bahasa Malaysia summary

Perayu merupakan pihak berkuasa perancang tempatan berkenaan sebidang tanah ('Lot 847') yang terletak di bawah bidang kuasanya yang mempunyai geran pegangan bebas menyatakan kategori kegunaan tanah sebagai 'Perusahaan/Industri' dengan syarat nyata bahawa tanah tersebut perlu digunakan untuk 'Industri Sederhana'. Di bawah Rancangan Tempatan Majlis Perbandaran Subang Jaya 2020 ('rancangan tempatan MPSJ'), Lot 847 telah dizonkan untuk 'Industri' dan boleh digunakan untuk 'tujuan komersial'. Pemilik berdaftar Lot 847 memohon kepada pihak berkuasa untuk menukar kategori kegunaan tanah kepada 'Bangunan' dan syarat nyata penggunaan tanah kepada 'Perniagaan'. Sebagai balasan, perayu memaklumkan bahawa ia tidak mempunyai bantahan terhadap perubahan penggunaan kepada 'komersial' manakala pihak berkuasa negeri meluluskan penukaran kategori kegunaan tanah kepada 'Bangunan' dengan syarat nyata tanah tersebut akan digunakan untuk 'Bangunan Komersial'. Di bawah surat kuasa wakil daripada pemilik berdaftar Lot 847, responden pertama ('Visamaya') memohon kepada perayu untuk kebenaran merancang untuk membina dua blok pangsapuri perkhidmatan komersial di atas tanah tersebut. Perayu menolak permohonan itu atas alasan projek yang dicadangkan itu tidak selaras dengan penggunaan tanah di sekelilingnya; bahawa hanya aktiviti komersial sahaja yang menyokong kawasan perindustrian sedia ada boleh dibenarkan. Rayuan Visamaya kepada responden kedua ('lembaga rayuan') terhadap keputusan perayu ditolak. Visamaya kemudiannya memohon untuk dan memperoleh satu perintah certiorari daripada Mahkamah Tinggi membatalkan keputusan lembaga rayuan dan satu perintah mandamus mengarahkan lembaga rayuan untuk menimbang semula rayuan Visamaya. Mahkamah Tinggi, antara lainnya, menggunakan s 108 Kanun Tanah Negara ('KTN') untuk memutuskan bahawa rancangan tempatan MPSJ yang menentukan bagaimana Lot 847 perlu digunakan, di bawah s 108, kepada 'sekatan' yang tidak selaras dengan syarat nyata dalam dokumen hak milik daftar ke tanah dan, setakat yang tidak konsisten, 'sekatan' tersebut tidak mempunyai kesan; bahawa, dengan itu, keputusan lembaga rayuan tersebut menyalahi

undang-undang, batal dan tidak sah. Rayuan ini adalah terhadap keputusan Mahkamah Tinggi tersebut.

Diputuskan, dengan kos sebanyak RM20,000 membenarkan rayuan dan mengetepikan keputusan Mahkamah Tinggi:

(1) Hujahan bahawa s 108 KTN manjadikan Akta Perancangan Bandar dan Desa 1976 ('APBD') dan zon di bawahnya tidak konsisten dengan penggunaan tanah di bawah geran KTN adalah tidak sah, terbatal dan tanpa merit. Mahkamah Tinggi gagal mengambil kira bahawa KTN telah digubal pada tahun 1965 manakala APBD telah digubal pada tahun 1976. Parlimen tidak boleh mengendahkan KTN yang digubal sebelum ini. Pendekatan kepada tafsiran, oleh itu, mestilah bahawa Parlimen bertujuan APBD dibaca selaras dengan KTN; dan, jika itu tidak mungkin, APBD, sebagai undang-undang terkemudian, diutamakan. Seksyen 108 KTN tidak terpakai kepada undang-undang yang diluluskan oleh Parlimen selepas itu dan peraturan-peraturan yang diberi kuasa di bawahnya. KTN memperuntukkan terma-terma umum untuk kegunaan tanah untuk pertanian, bangunan dan industri. Syarat-syarat dalam geran individu terlalu rumit untuk tujuan pembangunan perancangan. Sebelum KTN, sebilangan besar geran tanah telah dikeluarkan dan terdapat undang-undang yang lain dan undang-undang kecil. Untuk tujuan itulah s 108 digubal (lihat perenggan 19, 17 & 18)

(2) Penggunaan yang dibenarkan dalam geran di bawah KTN perlu dibaca supaya selaras dengan penggunaan zon di kawasan di mana tanah tersebut terletak. Sebuah bangunan komersial di kawasan tempatan yang dirancang atau dizonkan untuk industri mestilah sejajar dengan industri yang disediakan. Untuk menerima sebaliknya adalah melanggar APBD dan rancangan tempatan MPSJ. Walaupun pangsapuri perkhidmatan yang dicadangkan dalam kes ini adalah sebuah bangunan komersial, kategori kegunaan tanah dalam geran adalah perkara lain dari perancangan atau zon untuk industri. Dengan menggunakan istilah 'bangunan komersial' dalam geran untuk membolehkan bangunan komersial yang diberikan dengan zon perindustrian yang sedia ada merupakan kawajaran munasabah yang berhak dilakukan oleh pihak berkuasa perancang tempatan untuk memastikan pematuhan kepada objektif perancangan yang telah diluluskan. Lembaga rayuan, oleh itu, tidak bertindak secara tidak munasabah apabila menolak rayuan responden pertama (lihat perenggan 23–24).

(3) APBD diperuntukkan secara khusus untuk pengawalan dan pengawalseliaan perancangan bandar dan desa di Semenanjung Malaysia dan untuk tujuan yang berkaitan dengannya atau bersampingan dengannya. Walaupun KTN menyatakan penggunaan tanah dalam geran individu, APBD menyatakan perancangan oleh zon kegunaan

tanah. Pada masa yang APBD telah diisytiharkan, sejumlah besar geran tanah telah dikeluarkan dengan syarat-syarat penggunaan, pada kebiasaannya, berbeza daripada pengezonan. Bagi pembangunan yang dirancang untuk berjaya, sekiranya syarat penggunaan dalam geran itu bercanggah dengan zon, syarat tersebut secara rutinnya dipinda untuk kegunaan yang dibenarkan oleh zon (lihat perenggan 20).

(4) Syarat-syarat yang terkandung dalam surat balasan Pejabat Daerah dan Tanah Petaling untuk responden pertama menyatakan dengan jelas bahawa walaupun perubahan penggunaan tanah telah dibenarkan, responden pertama diharap mematuhi rancangan tempatan MPSJ dan keperluan pihak berkuasa perancang (lihat perenggan 21–22).

(5) Tiada penyalahan undang-undang terhadap s 108 KTN dalam kes ini. Tidak didapati ketidakrasionalan, kurang imbangan atau ketidakwajaran prosedur dalam keputusan perayu dan lembaga rayuan (lihat perenggan 26).]]

Notes

For a case on refusal, see 8(3) *Mallal's Digest* (5th Ed, 2015) para 4257.

Cases referred to

Badiaddin bin Mohd Mahidon & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393, FC (refd)

Council of Civil Service Unions and Ors v Minister for the Civil Service [1985] AC 374, HL (refd)

Datin Siti Hajar v Murugasu [1970] 2 MLJ 153; [1970] 1 LNS 23, HC (refd)

Teh Bee v K Maruthamuthu [1977] 2 MLJ 7, FC (refd)

Venkateswara Sdn Bhd v Datuk Bandar Kuala Lumpur [2002] 8 CLJ 997, HC (refd)

Legislation referred to

National Land Code ss 52, 89, 104, 108, 120, 124(1)(a), (c), 125, 134
Town and Country Planning Act 1976 s 22

Appeal from: Judicial Review No 25–44–05 OF 2013 (High Court, Shah Alam)

Karin Lim Ai Ching (Murgan a/l D Maniam with him) (Presgrave & Matthews) for the appellant.

Alex Tan Chie Sian (Dennis Goh with him) (Wong Kian Kheong) for the first respondent.

Abdul Wahab Patail JCA:

[1] The appellant Majlis Perbandaran Subang Jaya appealed against the decision of the High Court to issue:

(a) an order of certiorari to quash the decision dated 12 March 2013 of the Selangor Appeal Board ('the appeal board') which dismissed the appeal of the first respondent Visamaya Sdn Bhd against the dismissal on 22 May 2012 of its application made on 30 April 2012 to the appellant for planning permission to construct two blocks of service apartment on Lot 847, Jalan Subang 7, Taman Perindustrian Subang USJ 1, Subang Jaya, Mukim Damansara, Daerah Petaling ('Lot 847'); and

(b) an order of mandamus directing the appeal board to reconsider the first respondent's appeal against the said decision of the appellant was also issued.

BRIEF FACTS

[2] Lot 847 is located within the administrative area of the appellant. It is the local planning authority that, pursuant to s 22 of the Town and Country Planning Act 1976 ('the TCPA'), is empowered to consider applications for planning permission within its administrative area.

[3] The title document issued under the National Land Code ('the NLC') in respect of Lot 847 shows it is a freehold title with the express condition that it is for 'Industri Sederhana' within the land use category of 'Perusahaan/Industry'.

[4] Under the local plan Majlis Perbandaran Subang Jaya 2020 ('the Local Plan MPSJ 2020') agreed to by the state authority and which assent was *gazetted* in the Government *Gazette* of the State of Selangor, *Gazette* No 1566 on 27 May 2010, Lot 847 was zoned 'Perindustrian' which may be used for 'commercial purposes'.

[5] On 8 July 2011, an application was made by the registered proprietor under s 124(1)(a) and (c) of the NLC to the Land Administrator Petaling, to convert the land use category of Lot 847 from 'Perindustrian' to 'Bangunan' and the express condition from 'Industri sederhana' to 'Perniagaan'. By a letter dated 15 August 2011, the appellant had no objections to change of use to 'Komersial'. On 21 December 2011, the state authority approved the application for conversion of Lot 847 to 'building' with the express condition 'commercial building' pursuant to s 124(1)(a) and (c) NLC and subject to, inter alia, compliance with policies and guidelines of the state planning committee and the local planning authority. This was notified by a letters by

the Pejabat Daerah dan Tanah Petaling dated 25 January 2012 and 15 March 2012. A

[6] On 20 April 2012, an application for planning permission was made by the first respondent under a power of attorney from the registered proprietor, to construct two blocks of commercial 'service apartment' containing: B

(a) block A – 23 Storey Commercial 'Service Apartment' (319 unit);

(b) block B – 23 Storey Commercial 'Service Apartment' (319 unit);

(c) one storey shop office (7 unit); and C

(d) facilities.

[7] By a letter dated 30 May 2012, the appellant notified the first respondent that its application was rejected by the appellant at its meeting on 22 May 2012 on the grounds: D

(a) the commercial activity of 'Service Apartment' was not consistent with the surrounding land usage; and

(b) the commercial activity allowed was commercial activity to support the existing industrial area. E

[8] The appeal board dismissed an appeal by the first respondent against that decision. The first respondent sought and obtained from the High Court an order of certiorari to quash the decision of the appeal board and an order of mandamus to the appeal board to reconsider the first respondent's appeal thereat. The appellant appealed to this court. F

DECISION

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[9] The High Court had adopted the arguments for the first respondent as follows:

(a) s 89 of the NLC stipulates that every register document of title shall, inter alia, be conclusive evidence of the conditions, restrictions in interest and other provisions subject to which the land is for the time being held by that person or body: Teo Keang Sood and Khaw Lake Tee: *Land Law in Malaysia Cases and Commentary* 2nd Ed, Butterworths Asia; *Teh Bee v K Maruthamuthu* [1977] 2 MLJ 7; H

(i) s 52 of the NLC prescribes only three main categories of land use: I

(1) agriculture;

(2) building; and

(3) industry.

(b) s 120 of the NLC provides that an express condition is a condition that is attached to any land that is alienated by the state authority to a person or body, and s 104 provides that an express condition runs with the land and binds the registered proprietor of the land. Therefore the express condition 'Commercial Building' on Lot 847 binds the registered proprietor to use as 'Commercial Building';

(c) s 108 of the NLC provides that where any land affected by any by-law of, or restriction imposed by, any local authority or planning authority become subject by virtue of this Act to any condition which is inconsistent therewith, the condition shall prevail, and the by-law or restriction shall, to the extent of the inconsistency, cease to apply to the land;

(d) ss 125 and 134 of the NLC the High Court held it is in the interest of a registered proprietor of land to ensure that the land use and express condition imposed on his land is complied with completely since should there be any breach of condition of the land use and express condition, the land shall be liable to be forfeited; and

(e) s 108 provided:

> Conflict with local by-laws, etc. Where any land affected by any by-law of, or restriction imposed by, any local authority or planning authority becomes subject by virtue of this Act to any condition which is inconsistent therewith, the condition shall prevail, and the by-law or restriction shall, to the extent of the inconsistency, cease to apply to the land.

[10] At para 27 of its grounds of judgment, the High Court summed up the argument for the appellant as follows:

> 27. MPSJ's argument is premised on the following: (i) the applicant did not raise the issue of s 108 of the NLC in the Notice of Appeal; (ii) there is no conflict between the NLC and the TCPA 1976; (iii) there is no conflict between the express condition of 'Commercial Building' endorsed on the document of title and the land use under MPSJ Local Plan. Lot 847 is zoned as 'Perindustrian' under MPSJ Local Plan and the site may be used for 'commercial purposes' subject to conditions specified therein; (iii) s 18 of the TCPA 1976 requires any land to be used in conformity with the local plan; (iv) there is a distinction between the concept of 'use' of land under the NLC on the one hand and 'Use Classes' under the MPSJ Local Plan; and (v) MPSJ is bound by s 22(4) of the TCPA 1976.

[11] We appreciate the distaste at the level of the superior courts that 'applicant did not raise the issue of s 108 of the NLC in the Notice of Appeal'. Given that every person is deemed to know the law, and ignorance of the law is no defence, the argument that a point of law was not raised earlier, without more, holds no merit; see *Badiaddin bin Mohd Mahidon & Anor v Arab*

Malaysian Finance Bhd [1998] 1 MLJ 393 (FC). It is an objection that applies where there are:

(a) disputed facts, because notice must be given to the other party to check and verify it if it so desires, to satisfy itself that the evidence and facts are genuine and true; and

(b) questions of law but only if it is demonstrated there are facts and evidence necessary to be led to answer the point of law being raised.

[12] Otherwise such argument not only cannot be accepted as a submission, but also, sounding petulant, has the effect of tainting the other submissions raised to its level. It left the High Court to the consideration of the law on interpretation of statutes and purposive interpretation (paras 28, 29, 30), conflict between the NLC and any restriction imposed by the local authority or local planning authority (para 31 and Ss 104 and 108 of the NLC), and the meaning of the word 'restriction', leading the High Court to hold:

> 33. Applying the above principles, the word 'restriction' appearing in s 108 of the NLC should be construed as a restriction imposed by the local authority or planning authority upon the owner of the land. And to the extent that the restriction is inconsistent with the express condition in the register document of title, the restriction shall not have any effect.
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> 34. In the circumstances of this case, can it be said that the MPSJ Local Plan amounts to a 'restriction' within the meaning of s 108 NLC? How does this reconcile with s 18 of the TCPA 1976 which provides that no person shall use or permit to be used any land or building otherwise than in conformity with the local plan.

[13] The High Court then referred to two cases in the High Court. However, *Datin Siti Hajar v Murugasu* [1970] 2 MLJ 153; [1970] 1 LNS 23 did not concern s 108 but only the NLC generally, and the complete paragraph reads as follows:

> Moreover, the purpose of the National Land Code is provided by its long title: 'An Act to amend and consolidate the laws relating to land and land tenure, the registration of title to land and of dealings therewith and the collection of revenue therefrom within the States of Johore, Kedah, Kelantan, Malacca, Negri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu, and for purposes connected therewith'. The rule of construction is that an amending and consolidating Act implies both addition to, and derogation from, the pre-existing law, but such an Act is a complete Code in itself as regards the subjects it deals with. This appears to be the resulting implication of the views of Lord Herschell in *Bank of England v Vagliano Brothers* [1891] AC 107 in the Privy Council when considering the Bills of Exchange Act, 1882. In *Despatie v Tremblay* [1921] 1 AC 702709 also a Privy Council case, Lord Moulton cited with approval the language used by Lord Herschell in the case cited above, and said in relation to the interpretation of a statute:

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> From thenceforth the law is determined by what is found in the code and not by a consideration of the conclusions which ought to have been drawn from the materials from which it has been framed.
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[14] Despite the NLC is a complete Code in itself as regards the subjects it deals with, it can be amended and the interpretation is based upon what is found in the Code as amended.

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[15] In *Venkateswara Sdn Bhd v Datuk Bandar Kuala Lumpur* [2002] 8 CLJ 997, the High Court was concerned with whether the local authority had exceeded its powers and acted unreasonably and did not directly make the proposition that where there is a conflict between the provisions of the NLC and local planning laws, the provisions of the NLC shall prevail.

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[16] The High Court in the instant case was correct in appreciating that the decisions of MPSJ and the appeal board were predicated upon the finding that the proposed development was incompatible with the MPSJ local plan. It concluded:

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> 39. Suffice it to say at this juncture that there is an obvious conflict between the express condition in the register document of title and the local plan. Insofar as any of the conditions under the MPAJ Local Plan are inconsistent with the express condition 'Commercial Building' for Lot 847, those conditions in question are restrictions within the meaning of s 108 of the NLC.

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> 41. Accordingly, it follows that the decision of the appeal board is tainted with illegality and is accordingly null and void.

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[17] In so doing the High Court failed to take into consideration that the NLC was enacted in 1965 while the TCPA was enacted in 1976. Parliament cannot be held to be ignorant of the NLC enacted in 1965. On the contrary, Parliament being aware of the NLC it passed in 1965, the approach to interpretation must be:

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(a) Parliament intended that the TCPA be read consistent with the NLC; and if not possible

(b) the TCPA, as the later legislation prevails.

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[18] The NLC provided in general terms for land use for agriculture, building, and industry. Conditions in individual titles are too cumbersome a means for the purpose of planning development. Before the NLC, a large number of land titles had been issued. There were other laws and by-laws. It is to these that s 108 was directed. Section 108, however, cannot apply to laws

passed subsequently by Parliament and regulations authorised thereunder.

[19] We, therefore, hold the submission that s 108 renders the TCPA and zoning thereunder inconsistent with land use under the NLC titles null and void holds no merit.

[20] The TCPA provided specifically for the proper control and regulation of town and country planning in Peninsular Malaysia and for purposes connected therewith or ancillary thereto. While the NLC addresses land use in individual titles, the TCPA addresses planning by land use zones. By the time the TCPA was promulgated, large numbers of land titles had been issued, with condition of use as often as not that differs from the zoning. For planned development to succeed, obviously if the condition of use in the title is in conflict with the zoning, the condition is almost routinely amended to the use authorised by the zoning.

[21] We note that the Pejabat Daerah dan Tanah Petaling had by its letter of 25 January 1012 notified that 'Syarat-syarat terperinci dan notis 7G akan dikemukakan kemudian setelah mendapat nilaian tanah daripada Jabatan Penilaian Dan Perkhidmatan Harta Negeri Selangor.' By its letter of 15 March 2012, the Pejabat Daerah dan Tanah Petaling set out the terms, inter alia, as follows:

> 2. Sukacita dimaklumkan bahawa Majlis Mesyuarat Kerajaan Negeri Selangor 39/2011 bertarikh 21 Disember 2011 menimbang dan meluluskan permohonan tuan ke atas hakmilik GM 88 Lot 847, Mukim Damansara, Daerah Petaling seperti syarat-syarat dan bayaran berikut:
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> (a) Bangunan perniagaan yang dibina tertakluk kepada keperluan piawaian Pihak Berkuasa Perancang;
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> (b) Kategori tanah, syarat nyata, premium tambahan dan cukai tahunan seperti berikut: ... ;
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> (c) Pemilik tanah dikehendaki menyediakan pelan tatatur yang diluluskan oleh Pihak Berkuasa Perancang dengan mematuhi dasar dan Garis Panduan Perancangan yang diluluskan oleh Jawatankuasa Perancang Negeri;
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> (d) Sekiranya dipecah sempadan, pemilik tanah dikehendaki menyerahbalik tanah-tanah bagi kegunaan awam di bawah Seksyen 195 Kanun Tanah Negara untuk diwartakan di bawah Seksyen 62, Kanun Tanah Negara;
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> (e) Majlis Perbandaran Subang Jaya tidak dibenarkan menandatangani pelan bangunan dan pelan kerja tanah selagi hal-hal tanah belum diselesaikan;
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> (f) Pemilik tanah dikehendaki mematuhi kehendak-kehendak Jabatan Teknikal yang berkaitan;

(g) Pemilik tanah disyaratkan mendirikan di atas tanah sebuah bangunan bagi maksud perniagaan dalam masa dua (2) tahun dari tarikh kelulusan permohonan ini;

(h) Perlanggaran kepada syarat tersebut, maka tanah hendaklah menjadi tertanggung untuk pelucuthakan kepada Pihak Berkuasa Negeri dan Pentadbir Tanah hendaklah menjalankan kuasa penguatkuasaan pelucuthakan itu selaras dengan peruntukan Seksyen 129 Kanun Tanah Negara;

(i) (i) ....

[22] Quite clearly while a change of use was allowed, it was expected that the first respondent complies with the Local Plan MPSJ 2020 and requirements of the planning authority.

[23] The conditions by the Pejabat Daerah dan Tanah Petaling reflect the experience that a condition of use in the title for industry allows buildings for industry, but in such a case the emphasis must necessarily be industry. The letter dated 15 March 2012 allowed a change from medium industry to 'commercial building'. There are many types of commercial buildings, some consistent with and others not consistent with the zoning of the area the land is located in. The use allowed in the title under the NLC must be read so as to be consistent with the zoned use of the area the land is located in. A commercial building in a local area planned or zoned for industry must necessarily be a commercial building consistent with serving industry. To accept otherwise would be to flout the TCPA and the Local Plan MPSJ 2020.

[24] We would accept that a commercial service apartment is a commercial building. But land use in a title is quite another matter from the plan or zoning for industry. Applying the term 'commercial building' in the title to allow commercial building that accords with the existing industrial zoning is a reasonable rationalisation that the local planning authority is entitled to make to ensure adherence to the planning objectives as approved, and the appeal board was not unreasonable to have rejected the appeal.

[25] The application in this case was made under the supervisory jurisdiction of judicial review. Time and again the courts have referred to *Council of Civil Service Unions and Ors v Minister for the Civil Service* [1985] AC 374 (HL) that judicial review is not to interfere but to intervene where there is illegality, procedural impropriety or irrationality and possibly proportionality.

[26] Procedural impropriety and proportionality did not arise in this case. As we have set out above, there is no illegality as against s 108 of the NLC. We find

no irrationality nor lack of proportionality in the decision of the appellant and the appeal board. In the circumstances, there was no reason to intervene.

[27] Accordingly, we had allowed the appeal, set aside the order of the High Court, fixed costs in the sum of RM20,000 here and below and ordered the deposit be refunded.

Appeal allowed and the High Court's decision set aside with costs of RM20,000.

Reported by Ashok Kumar